

**UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF NEW YORK**

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**AVOCENT REDMOND CORP.,**

**Plaintiff,**

**- against -**

**RARITAN AMERICAS, INC.,**

**Defendant.**  
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**Civil Action No. 10-CV-6100-PKC**

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**X**

**DECLARATION OF CHRISTOPHER FOSTER**

I, Christopher Foster, hereby declare as follows:

1. I am an Information Technology Program Analyst for Avocent Redmond Corp., the plaintiff in the above-identified case ("Avocent"). As such, I have direct knowledge of and experience with Avocent's information technology ("IT") systems.

2. In April 2011, I was asked to assist with locating old electronic files that may be relevant to the lawsuit identified above. More specifically, I was asked to locate files relating to the software version control system (called "PVCS") that Avocent (then known as Apex PC Solutions) used in the 1990s. I was also asked to look for any engineering documents (including development, hardware, or software files) from 1992-1995. These search criteria should have retrieved files relating to Apex's KVM switches sold or delivered to Microsoft in the early 1990s if the files were created or modified any time between January 1, 1992 and December 31, 1995. I conducted several searches to locate the files. Because our network is an active network, and because of the amount of data stored on that network, each individual search took approximately six hours to complete. Files fitting the search criteria were found on our active backup media,

and I created a separate backup tape containing these files. That tape was forwarded to a data processing vendor identified by Avocent's litigation counsel for further review.

3. I understand that those files were reviewed and it was determined that I needed to broaden the search window. For the second round of searching, I was asked to look for directories belonging to Danny Beasley, Paul Lacrampe, and Robert Seifert regardless of their date. I was also asked to collect all PVCS files regardless of their date. A directory for Robert Seifert was found as well as several PVCS files. I put that directory and the PVCS files on a second backup tape, and sent that tape to the data processing vendor for further review. No other data fitting the search criteria was located.

4. I was then asked to assist with a third round of searching. In this third round, Apex's former engineering director from the 1990s, Danny Beasley, was to come in and go through Avocent's current backup media and offline backup media with me to try to locate all engineering documents from the 1990s that may be on those backups. In this round of searching, we were specifically asked to also look for files relating to KVM switches Apex sold or delivered to Microsoft in the early 1990s, even though these files would have been encompassed in the earlier searches. There were no date restrictions or other types of restrictions on the backup media we were to search.

5. Mr. Beasley and I conducted these searches at Avocent. Mr. Beasley and I located directories of mostly software and PVCS files from the 1990s, and those files were exported to CDs with one copy being given to Mr. Beasley for his further search and review, and one copy to Avocent's litigation counsel for use in the litigation.

6. Before Mr. Beasley and I got through all of the backup tapes, the tape drive used to read the tapes failed. Specifically, the tape drive jammed while cataloging an old tape, and the

drive would not work after the jam was cleared. I asked IT staff in Avocent Huntsville's facility if they had a replacement drive they could send me. Such a drive was located, and sent to me. To install the new drive, I had to remove the old drive from the server rack, and install the new drive in the rack. I also had to install a new fiber card in the server in order to communicate with this new tape drive. The server and the backup software had to be configured to operate with the new tape drive.

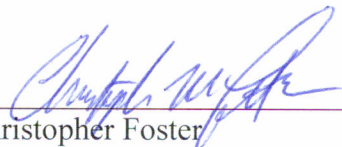
7. Once the system was operational, I had to import and catalog each of the sixteen tapes so they could be searched. Each tape took between one hour and six hours to be cataloged, depending on the amount of data stored on the tape.

8. Once the tapes were ready for searching, I looked for relevant files and directories, and I also conducted a Live Meeting with Mr. Beasley to search for relevant files and directories, including the files relating to the KVM switches sold or delivered to Microsoft in the early 1990s. We did not locate any relevant files in the tapes restored using the new tape drive.

9. I estimate that I personally spent about 26 hours on the activities described above.

10. I declare under penalty of perjury that the foregoing is true and correct.

DATED this 12 th day of August, 2011.

  
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Christopher Foster